

REMARKS

Claims 1-8 and 13-33 are amended herein. Withdrawn claims 9-12, 34-43 and 48-49 are amended herein. Claims 44-47 are canceled.

I. Response to Restriction Requirement

Claims 9-12, 34-43, 48 and 49 are withdrawn from further consideration as being drawn to a non-elected invention. According to the Examiner, there are no allowable generic or linking claims.

The Examiner states that the traversal on the basis that Group VI should be examined together with Group I is not found persuasive because the compounds of formula (II) are not a tautomer of formula (I). According to the Examiner, a tautomer is where the double bond between the double O or double bond S becomes part of the ring and the hydrogen atom on the adjacent N binds to the O or S forming OH or SH. The Examiner asserts that compounds of Group VI are substituted by chlorine, bromine, iodine, or an alkyl or arylsulfonyl group which may be substituted. Thus, the Examiner concludes that a search of the compounds of formula (I) would not include the compounds of formula (II) as urged by the Applicants. Therefore, the Examiner deems the requirement to be proper and it is made final.

Applicants respectfully submit that the present application is a National Stage Application and under the PCT rules, unity of invention should be determined on the basis of a common technical feature and in this case the compounds of Group VI and I share a common structure. The main structure, a pyrimido [4', 5', 4, 5] pyrrolo [1, 2-d] [1, 4] diazepine ring, is common to the compounds of both groups and therefore, these groups should be examined together.

In view of the above, Applicants respectfully request reconsideration of the restriction requirement.

II. Information Disclosure Statement

The Examiner states that the listing of references in the specification is not a proper Information Disclosure Statement (IDS). 37 C.F.R. § 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office. See MPEP § 609.04(a), which states, “the list may not be incorporated into the specification but must be submitted in a separate paper.” Therefore, unless the references have been cited by the Examiner on form PTO-892, they have not been considered.

Additionally, the Examiner states that the IDS filed on August 20, 2004 fails to comply with 37 C.F.R. § 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. Thus, the Examiner states that it has been placed in the application file, but the information referred to therein has not been considered.

An Information Disclosure Statement will be submitted.

III. Response to Claim Rejections - 35 U.S.C. § 112, 1st Paragraph

Claims 44-47 are rejected under 35 U.S.C. 112, first paragraph, as allegedly failing to comply with the enablement requirement. The Examiner states that the claims contain subject matter, which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claims 44-47 are canceled herein, thereby obviating the rejection.

Accordingly, Applicants respectfully request withdrawal of the rejection.

IV. Response to Claim Rejections – 35 U.S.C. §112, 2nd Paragraph

Claims 1-8, 13-33 and 44-47 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for the following reasons.

(A) Claims 1-8, 13-33 and 44-47 are said to be vague and indefinite in that it is not known what is meant by the term “derivative” which implies more than what is positively recited.

The claims are amended herein by replacing the word “derivative” with the word “compound”, thereby obviating this grounds for rejection.

(B) Claim 1 and claims dependent thereon are said to be vague and indefinite because of the brackets around the definitions of the substituents of formula (I).

The claims are amended by deleting the brackets and parentheses in the claims as appropriate, thereby obviating this grounds for rejection.

(C) Claim 1 and claims dependent thereon are said to be vague and indefinite because of the periods used at the end of lines 8, 9 and 23 on page 192, lines 2 and 4 on page 193, lines 12 and 14 on page 196, and line 24 on page 198.

The claims are amended by deleting periods in the body of the claim, thereby obviating this grounds for rejection.

(D) Claim 1 and claims dependent thereon are said to be vague and indefinite because of the capital letter, which appears at the beginning of lines 6, 8, 9, 10 and 24 on page 192, line 3 on page 193, line 13 on page 196, and line 25 on page 198.

The claims are amended by replacing the inappropriate capital letters in the body of the claim, thereby obviating this grounds for rejection.

(E) Claim 1 and claims dependent thereon are said to be vague and indefinite allegedly because it is not known what is meant by the definition of R³⁰ to R³² which does not set forth those variables included within the definition.

Applicants traverse this grounds for rejection and respectfully submit that claim 1 recites that the variables “R³⁰ to R³² represent, independently from one another, a hydrogen atom or substituted or unsubstituted aliphatic hydrocarbon group having one to four carbons”. Therefore the phrase R³⁰ to R³² includes R³⁰, R³¹ and R³² and these variables are defined.

(F) Claim 3 and claims dependent thereon are said to be vague and indefinite allegedly because it is not known what is meant by the definition of R¹ and R² where R¹ and R² are as defined above.

Claim 3 is amended by deleting the phrase “where R¹ and R² are as defined above”. Since claim 3 depends from claim 1 and claim 1 includes a definition of R¹ and R², these variables are sufficiently defined in the claims.

(G) Claim 28 recites the limitation "optionally substituted phenoxy group" in the definition of R³. The Examiner states that there is insufficient antecedent basis for this limitation in the claim.

Regarding "optionally substituted phenoxy group" in claim 28, Applicants respectfully submit that "a divalent group of an alkane having two to four carbons substituted with an optionally substituted phenoxy group" is an embodiment of "a substituted or unsubstituted aliphatic hydrocarbon group having one to ten carbons" substituted with "an aryloxy group having six to ten carbons" in claim 1. Since "an aryloxy group having six to ten carbons" in claim 1 is not "an optionally substituted aryloxy group having six to ten carbons", "a divalent group of an alkane having two to four carbons substituted with an optionally substituted phenoxy group" in claim 28 should be "a divalent group of an alkane having two to four carbons substituted with a phenoxy group". This is readily understood by those of ordinary skill in the art.

Thus, Claim 28 is amended herein by replacing the term "optionally substituted phenoxy group" with "phenoxy group", thereby obviating this grounds for rejection.

(H) Claim 30 and claims dependent thereon are said to be vague and indefinite because it is not known what is meant by the moiety -CH₂- in the definition of G¹. The Examiner believes that the Applicants intended "-CH₂-".

Claim 30 is amended by replacing "-CH₂-" with "-CH₂-", thereby obviating the rejection.

(I) Claims 44, 46 and 47 are said to be vague and indefinite because the claim provides for the use of claimed compounds, but the claim does not set forth any steps involved.

Claims 44, 46 and 47 are canceled, thereby obviating this grounds for rejection.

(J) Claims 46 and 47 are said to be vague and indefinite allegedly because it is not known what is meant by "agent".

Claims 46 and 47 are canceled, thereby obviating this grounds for rejection.

(K) Claims 46 and 47 are considered substantial duplicates of claim 1-46 because a statement of intended use is not given material weight.

Claims 46 and 47 are canceled, thereby obviating the rejection.

In view of the above, Applicants respectfully request withdrawal of the rejections.

V. Response to Claim Rejection under 35 U.S.C. § 103

Claims 1-8, 13-33 and 44-47 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Cao et al., U.S. Patent Application Publication No. 2003/0096813.

Without conceding the merits of the rejection, claim 1 is amended herein by deleting “-CH-” from the definition of A and “a hydrogen atom” is deleted from the definition of G². Cao et al does not disclose, teach or suggest compounds within the scope of formula (I) as recited in amended claim 1. Thus, the present invention is patentable over the cited reference.

Accordingly, Applicants respectfully request withdrawal of the rejection.

VI. Response to Claim Objections

Claims 20-23, 31-33 and 44-47 are objected to under 37 C.F.R. §1.75(c) as being in improper form because a multiple dependent claim cannot depend on another multiple dependent claim. See MPEP § 608.01(n).

The claims are amended herein, thereby obviating the objection.

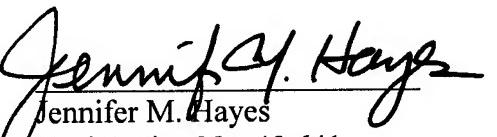
Accordingly, Applicants respectfully request withdrawal of the objection.

VII. Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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